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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,620	07/25/2003	Paul J. Rudeck	M4065.0567/P567-A	9373
24998	7590	12/29/2005	EXAMINER	
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP 2101 L Street, NW Washington, DC 20037				SCHILLINGER, LAURA M
ART UNIT		PAPER NUMBER		
		2813		

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/626,620	RUDECK, PAUL J.
	Examiner	Art Unit
	Laura M. Schillinger	2813

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 17 October 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 9-13 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 9-13 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 9-13 are rejected under 35 U.S.C. 102(a) as being anticipated by Admitted Prior Art (hereinafter referred to as “APA”- the citations below pertain to Applicant’s specification).

APA teaches the following claimed limitations as follows:

9. A memory device comprising:

a gate stack pair with a space between them defining a contact opening (APA- Fig.2A and Fig. 1 (9) and page 3 [0007];

a vertical oxide spacer adjacent to each gate stack of the gate stack pair (APA- Fig.2B(11) and page 3 [0007]); and

a respective continuous nitride layer overlaying each said vertical oxide spacer and each said gate stack (APA- Fig. 2C (12) and page 3 [0007]), neither of the continuous nitride layers extending to cover the contact opening between the gate stack pair(APA- Fig. 2D (12)).

10. The memory device of claim 9, wherein said gate stack comprises a floating gate and a control gate (APA- Fig.1 (4 and 6) and page 2 [0006]).

11. The memory device of claim 9, wherein said vertical oxide spacer is between about 50 Å and about 300Å in thickness (APA- page 3 [0007]).

12. The memory device of claim 11, wherein said vertical oxide spacer is about 100Å and about 200Å in thickness (APA- page 3 [0007]).

13. The memory device of claim 9, wherein said nitride layer has a thickness equal to about one half the width of said vertical oxide spacer (APA – compare Fig.2C (11 and 12)).

***Response to Arguments***

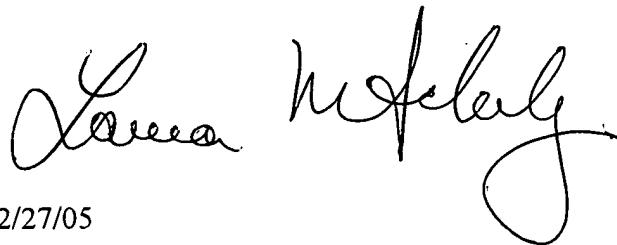
Applicant's arguments filed 7/25/03 have been fully considered but they are not persuasive. Applicant argues that his admitted prior art does not anticipate the amended claim language; however as shown above, the APA still anticipates Applicant's amendment. If the device structure exists at any time during the processing of the device, then the structure anticipates the claim language. Therefore, because layer 12 overlays the contact opening in Fig.2C and then is etched in 2D, it anticipates Applicant's claimed limitations exactly.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura M. Schillinger whose telephone number is (571) 272-1697. The examiner can normally be reached on M-T, R-F 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl W. Whitehead, Jr. can be reached on (571) 272-1702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



12/27/05

Laura M Schillinger  
Primary Examiner  
Art Unit 2813